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LINKS: 1, 20

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**CIVIL MINUTES - GENERAL**

Case No.	CV 11-07205 GAF (FMOx)	Date	November 18, 2011
Title	Nipponkoa Insurance Co Ltd U S Branch v. Charles P Durnian et al		

Present: The
Honorable**GARY ALLEN FEES**

Chris Silva for Renee Fisher

None

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

None

None

Proceedings: (In Chambers)**ORDER REMANDING CASE**

On July 13, 2011, Plaintiff Nipponkoa Insurance Co. Ltd. U S Branch ("Nipponkoa") filed a complaint in Los Angeles Superior Court alleging damage to a shipment of batteries that it had insured, against Defendants ATS Specialized, Inc. ("ATS"), Charles R. Durnian d/b/a Rex Transportation Company ("Rex Transportation"), Swift Transportation Corp. ("Swift Transportation"), Western Express, Inc. ("Western Express"), and Lan Logistics, Inc. ("Lan Logistics"). (Docket No. 1 [Not.], Ex. A [Compl.].) ATS was served on August 15, 2011, and it timely filed a Notice of Removal in this Court on August 31, 2011. (Not. ¶ 2.) On October 3, 2011, this Court issued an Order to ATS to Show Cause as to why the case should not be remanded for ATS' failure to prove consent to removal by two properly-served co-Defendants, Lan Logistics and Western Express, as required by 28 U.S.C. § 1446(a). (Docket No. 20, Order to Show Cause ("OSC").) In the OSC, this Court stated that ATS' failure to respond by October 24, 2011, "w[ould] be deemed consent to remand." (*Id.* at 3.)

To date, ATS has failed to respond to the Court's OSC. Nor has consent by Defendants Lan Logistics and Western Express been proven by other means. On October 11, 2011, Lan Logistics filed a Corporate Disclosure Statement in this Court; on the same day, Plaintiff filed a stipulation between itself and Western Express extending the time for filing of Western Express' Answer until October 28, 2011. (Docket Nos. 23, 24.) However, neither Lan Logistics nor Western Express has in fact filed an Answer or otherwise appeared in this Court. Although

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“[s]ome courts have held that a court may, in its discretion, treat an answer as consent to removal,” Peace v. Estate of Sorensen, No. CV08-2880, 2008 WL 2676367 (C.D. Cal. June 30, 2008) (emphasis in original), ATS has drawn this Court’s attention to no authority suggesting that it may treat the filing by Lan Logistics or the filing by Plaintiff on behalf of Western Express as manifestations of these Defendants’ consent to removal of the action.

Because removing Defendant ATS has not shown consent to removal by, or a consent substitute for, properly-served Defendants Lan Logistics and Western Express, the instant case has not been properly removed to this Court. See United Computer Sys., Inc. v. A.T.&T. Corp., 298 F.3d 756, 762 (9th Cir. 2002). The Court therefore **REMANDS** this case to state court for lack of subject matter jurisdiction.

IT IS SO ORDERED.